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4. PERSONAL INJURIES—*Damages—Mental anguish.* In an action to recover damages for personal injuries the jury may take into consideration the mental anguish as well as the physical pain resulting from such injuries.

NATIONAL LIFE ASSOCIATION v. BERKELEY.—Decided at Richmond, November 26, 1899. *Harrison, J. Absent, Keith, P.*

1. INSURANCE—*Construction of policy—"Indebtedness" to company—Unearned premiums.* If a plain, unambiguous policy of insurance stipulates that, in consideration of a stated bi-monthly premium, there shall be paid to the beneficiary a given sum upon the death of the insured less any "indebtedness due the company" issuing the policy, such "indebtedness" cannot refer to unearned or unaccrued premiums, but must refer to a real or actual indebtedness that the insured or beneficiary is liable for to the company when the policy matures.

2. INSURANCE—*Restrictive provisions of policy—Sec. 3252 of Code—What must be written or printed in type of prescribed size.* Sec. 3252 of the Code relating to conditions and restrictive provisions of insurance policies is to be liberally construed, in order to fully accomplish the purposes of the act. The words "conditions" and "restrictive provisions" are intended to cover any clause, expression or provision, included in or appended to a policy, whereby the effect of the principal and essential part of the policy is modified, changed, restricted, or otherwise affected, so as to materially influence the rights and liabilities of the insured thereunder. The requirement of the statute that such conditions and restrictive provisions shall be in writing, or printed in type of a given size, is not satisfied by inserting a figure, word, or even a sentence with pen and ink. The whole provision relied on must be in writing or type of the prescribed size, or else it is not available as a defence to an action on the policy.

TOWN OF HARRISONBURG v. ROLLER.—Decided at Richmond, November 16, 1899. *Riely, J.*

1. MUNICIPAL CORPORATIONS—*Changing grade of streets—Consequential damages.* A municipal corporation, when authorized by its charter, may make, improve, open and grade its streets and sidewalks, and if, in so doing, it exercises reasonable care and skill, it is not answerable to the owner of an adjacent lot, whose land is not actually taken, for consequential damages to his premises, unless such liability is created by its charter, or some statute. If there be such damage it is *damnum absque injuria*.

2. MUNICIPAL CORPORATIONS—*Grading streets—Consequential damages—Action at law—Injunction.* If damage results to an adjacent lot owner, from the improper manner in which a municipal corporation executes a lawful work, such damage is not necessarily incident to the accomplishment of the work, and the remedy is by an action at law. Courts of equity cannot interfere by injunction with the exercise in good faith by municipal corporations of discretionary powers conferred upon them by law. The apprehension of the lot-owner that the corporation may not perform a lawful work in a proper manner is no ground for an injunction.

3. MUNICIPAL CORPORATIONS—*Grading streets—Chancery jurisdiction.* Courts of equity are without jurisdiction to fix the grade of streets, or the manner in

which the work shall be done by municipal corporations invested with discretionary powers in the premises.

4. MUNICIPAL CORPORATIONS—*Delegation of powers over streets.* It is not an undue delegation of power for a municipal corporation to confide to the street committee the execution of work, where the work has been ordered and the manner of its execution prescribed by the council.

5. RES JUDICATA.—*Estoppel.* If the subject-matter of two suits be different, though the parties are the same, the decree in the first suit is no estoppel to the proceedings in the second.

STRICKLAND V. GRAYBILL.—Decided at Richmond, November 16, 1899.—*Keith, P.*

1. FALSE REPRESENTATIONS—*Matter of fact.* The representation by a vendor of a patent right that he has been offered a given sum for it, is the statement of a material fact, as the chief element of its value is the readiness with which it may be sold.

2. FALSE REPRESENTATIONS—*Set-offs—Sec. 3299 of Code—Rescission.* In an action on notes given for a patent right, if the defendant claims that he has been damaged by fraud or misrepresentation in the procurement of the notes, he may file a special plea under sec. 3299 of the Code, and have set off against the plaintiff's demand the amount of damages sustained by him in consequence of such fraud and misrepresentation. This does not require a rescission of the contract in suit and a reinvestment of the vendor with the title.

3. PLEADING—*Plea under sec. 3299 of Code—Scienter.* A plea under sec. 3299 is sufficient which avers that the statements of facts were falsely and fraudulently made for the purpose of procuring the contract; that they were material; that they were untrue; and that the defendant to whom they were made relied upon them, and was by them induced to enter into the contract.

4. CONTRACTS—*Fraud in procurement—Ratification.* The renewal of notes after knowledge of fraud in the procurement of the original notes will not be deemed a ratification of the original transaction where it satisfactorily appears that the maker did not thereby intend to waive his defence or ratify the transaction in consequence of an understanding with the holder that in a certain contingency he would surrender them.

CROWDER, DEEKER & CO. V. GARBER.—Decided at Richmond, November 16, 1899. *Buchanan, J.* Absent, *Keith, P.*

1. FRAUDULENT CONVEYANCES—*Husband and wife—Presumption—Competency of wife as witness.* In a contest between the creditors of the husband and the wife the presumption is against the *bona fides* of the transaction, which she must overcome by clear and satisfactory evidence. In such contest the wife is not a competent witness. In the case in judgment the requisite evidence to sustain the deed from the husband to the wife has not been furnished.